

PREDATOR PROJECT
BIODIVERSITY ASSOCIATES
FRIENDS OF THE BOW

IBLA 94-701, 94-702

Decided August 29, 1997

Consolidated appeals from the April 22, 1994, Decisions of the respective District Managers of the Miles City, Lewistown, and Butte Districts, Bureau of Land Management, Montana, concerning predator management. EA No. MT-930-93-01.

Affirmed; Biodiversity's appeal dismissed.

1. Environmental Policy Act--Environmental Quality:
Environmental Statements--National Environmental Policy
Act of 1969: Environmental Statements

A determination that a proposed action will not have significant effect of the quality of the human environment will be affirmed on appeal if the record establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the environmental analysis. A party challenging the determination must show that it was premised on a clear error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. The ultimate burden of proof is on the challenging party, and mere differences of opinion provide no basis for reversal.

2. Environmental Policy Act--Environmental Quality:
Environmental Statements--National Environmental Policy
Act of 1969: Environmental Statements

To the extent it is contended that the nonlethal options, Alternatives I and IV, should have been analyzed in detail, where an EIS to which the EA is tiered adequately considered the alternative, it need not be discussed again in the EA. Moreover, the Secretary of the Interior has ruled that the 1979 EIS prepared by FWS adequately discussed an alternative that emphasized nonlethal control techniques.

APPEARANCES: Jerry Grubbs, Bozeman, Montana, for the Predator Project; Donald J. Duerr, Laramie, Wyoming, for Biodiversity Associates and Friends of the Bow; John C. Chaffin, Esq., Office of the Field Solicitor, Billings, Montana, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Predator Project (PP), Biodiversity Associates (Biodiversity), and Friends of the Bow (Friends) have appealed the April 22, 1994, Decision Records and Findings of No Significant Impact (DR/FONSI) for Predator Management in Montana signed by the District Managers of the Miles City, Lewistown, and Butte Districts, Bureau of Land Management (BLM), and signed by the State Director on the same date. Each of the Decisions was based upon Revised Environmental Assessment (EA) No. MT-930-93-01, dated April 1994, which presented integrated pest management (IPM) and three alternatives thereto. Each Decision selected the IPM alternative, as described more fully below.

The genesis of the present case lies with the preparation of the initial version of EA No. MT-930-93-01, which was dated September 1993 and issued in November 1993, for the development of a Statewide Animal Damage Control (ADC) plan. The PP, Native Ecosystems Council (Council), and the National Wildlife Federation appealed the resulting DR/FONSI issued by each of the above District Managers on November 17, 1993. These appeals were docketed as IBLA 94-218, IBLA 94-235, and IBLA 94-236, respectively. Ultimately, upon motion by BLM, the Board issued an Order dated March 3, 1994, vacating the Decisions and remanding them to BLM for further action.

On remand, the November 1993 Decisions were withdrawn, and approximately 2 months later, on April 22, 1994, the Acting State Director of BLM issued revised EA No. MT-930-93-01. The revisions, which were fairly extensive, were the result of, or in response to, numerous comments on the November 1993 EA, including comments submitted by PP, Council, and Friends. As noted, each District Manager issued his DR/FONSI for the revised EA on April 22, 1994. Notices of the availability of the EA and DR/FONSI were published at 59 Fed. Reg. 22677 (May 2, 1994), and these timely appeals followed. The PP's Notice of Appeal (NA) was dated May 22, 1994, and received by the Montana State Office on May 27, 1994. It was docketed as IBLA 94-701. Biodiversity's and Friends' joint NA, which was dated May 31, 1994, and received in the State Office on June 3, 1994, was docketed as IBLA 94-702. The PP filed its Statement of Reasons (SOR) on June 22, 1994. Friends and Biodiversity filed a joint SOR with the Board on December 28, 1994, after we denied a motion by the Montana Stockgrowers Association, et al. to dismiss their appeal on November 10, 1994. Council did not appeal.

Before turning to the substance of this case, we must dispose of a preliminary matter. The record shows that Donald J. Duerr participated in the decisionmaking on behalf of Friends and Council. According to Duerr, Council is "a non-profit conservation organization incorporated in Montana

and Wyoming." (SOR at 1.) Duerr explains that they "have subsequently formed a new conservation group, Biodiversity Associates, and will be continuing our appeal under this name." Id. No further information about the composition or legal status of Biodiversity is offered, and the identities or roles of the persons involved in the decision to form a new group are not provided. Thus, the issue is whether Biodiversity can advance the appeal in lieu of Council as requested.

Departmental regulation 43 C.F.R. § 4.410 states that only a party to a case who is adversely affected by a decision may appeal. To be a party, the individual or organization must have participated in the decisionmaking associated with the EA and DR/FONSI issued in April 1994. Kendall's Concerned Area Residents, 129 IBLA 130, 136-37 (1994). Biodiversity did not submit comments on the April 1994 EA, however. The record on appeal shows that Biodiversity's name first appears in the May 31, 1994, NA Duerr filed, which suggests Biodiversity may have been formed after the decisionmaking that culminated in the original November 1993 EA. As there had been no showing in an appropriate submission that Biodiversity is the legal successor-in-interest to Council, we were unable to conclude that Biodiversity was a party to the case, and thus that it has standing to appeal. Kendall's Concerned Area Residents, *supra*. Accordingly, on June 11, 1997, we issued an Order to Show Cause why Biodiversity's appeal should not be dismissed for lack of standing. The organization was given 14 days after receipt of the Order to submit any information it had bearing upon the issue, and all the parties received copies of the Order. In the case of PP, the return receipt does not show the date it received its copy, but it certainly was before June 23, 1997, when the Board received the return receipt. Biodiversity did not respond, and we therefore dismiss Biodiversity's appeal. 1/ National Wildlife Federation, 126 IBLA 48, 52 (1993); The Wilderness Society, 110 IBLA 67, 72 (1989). Although dismissal is required as to Biodiversity, that action is not fatal to our consideration of the merits of the case, which will proceed as a result of Friends' standing to maintain the joint appeal alone.

The purpose of the Decisions is to authorize the control of depredations on public lands in a manner that is consistent with multiple-use planning and objectives. Coyotes and red fox are the primary predators of concern in all three Districts, although there is considerable variance in the number of reported and confirmed depredations among the three. By statute, the U.S. Department of Agriculture, Animal and Plant Health

1/ Duerr's statements similarly do not support a finding that Biodiversity represents Council. To appear on Council's behalf, Biodiversity is required to demonstrate that it is properly authorized to represent Council in these proceedings and that it is permitted to practice before the Department by 43 C.F.R. § 1.3. No such showing has been made and none appears from the record. We therefore hold that Biodiversity may not appear in this matter on behalf of Council.

Inspection Service-Animal Damage Control (APHIS-ADC), is the Federal agency that is responsible for protecting livestock and people from damage caused by wild animals on public and private lands. Pursuant to Memoranda of Understanding executed by APHIS and the Montana Department of Livestock (DOL) in 1989, and by APHIS and the Montana Department of Fish, Wildlife, and Parks (DFWP) in 1990, those parties agreed to jointly plan and implement a State ADC program.

The EA No. MT-930-93-01 is tiered to an Environmental Impact Statement (EIS) prepared by the U.S. Fish and Wildlife Service (FWS) and completed in 1979. The EIS, styled the U.S. Fish and Wildlife Service's Mammalian Predator Damage Management for Livestock Protection in the Western United States, evaluated predator management on a nationwide basis, and analyzed the then-proposed FWS program and nine alternatives. (EA at 3.) The proposed FWS program presented five control strategies, including "preventive control or general suppression of local populations of target species, buffer zone management, and offending animal management." Id. The EA here at issue recited that it "incorporated by reference the 1979 USFWS EIS and the Draft USDA [U.S. Department of Agriculture] Animal Damage Control EIS." Id. The EA further noted that

APHIS-ADC has issued a Supplement to the Draft Environmental Impact Statement (SDEIS) (January 1993), and is preparing the Final EIS. Since no Record of Decision (ROD) has been published, this EA cannot be tiered to the [SD]EIS. However, pertinent and current information available in the SDEIS has been incorporated by reference and used as the basis for some of the analysis.

Id. at 3-4.

Two methods of estimating the coyote population in Montana were employed. One estimate was derived from scientific modelling, which resulted in a figure of 57,000 to 517,000 coyotes in Montana. (DR/FONSI at 1-2.) The other was based on coyote density indices sampling from 1972 to 1981, which produced an estimate of approximately 300,000 animals. Id.; see EA at 103. In 1992, 7,847 coyotes were taken by APHIS and DOL on all lands. This figure amounts to 1.5 to 13.7 percent of the population as estimated by the model, or 2.6 percent of the population estimated by the sampling method. (DR/FONSI at 2.) The red fox population in Montana is estimated to be 379,000, also based on the scientific model. Id.

The EA considered eight alternatives, four of which were analyzed in detail: Alternative 1, the IPM proposed by APHIS, DOL, and BLM; Alternative 2, similar to Alternative 1, except use of cyanide devices (M-44's) would be prohibited; Alternative 3, emergency control only, the no action alternative; and Alternative 4, no APHIS or DOL predator management on BLM lands.

The DR/FONSI for each District is in large measure identical to the others, except with respect to the particulars of the coyote and red fox populations, depredation data, and the threatened or endangered species in

each of the three Districts. As stated, all three District Managers selected Alternative 1, IPM. In summary, Appellants challenge the adequacy of the EA, the factual bases for the DR/FONSI, and the sufficiency of the alternatives examined.

[1] It is Appellants' burden to prove their case by a preponderance of evidence, and we have articulated the nature of that burden on other occasions:

It is also well established that the Board will affirm a FONSI with respect to a proposed action if the record establishes that a careful review of environmental problems has been made, all relevant environmental concerns have been identified, and the final determination is reasonable. G. Jon Roush, 112 IBLA 293 (1990); Utah Wilderness Association, 80 IBLA 64, 78, 91 I.D. 165, 173-74 (1984). The record must establish that the FONSI was based on reasoned decision-making. Thus, one challenging such a finding must demonstrate either an error of law or fact or that the analysis failed to consider a substantial environmental problem of material significance to the proposed action. G. Jon Roush, *supra* at 298; Glacier-Two Medicine Alliance, 88 IBLA 133, 141 (1985). The ultimate burden of proof is on the challenging party and such burden must be satisfied by objective proof. Mere differences of opinion provide no basis for reversal. Red Thunder, Inc., 117 IBLA 167, 175, 97 I.D. 263, 267 (1990); G. Jon Roush, *supra* at 297-98.

Owen Severance, 118 IBLA 381, 392 (1991).

Friends first argues 2/ that the selected alternative, IPM, does not meet the purpose or policy of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 through 4370 (1994), in that "only one reason why the selected alternatives [sic] were chosen" was articulated, i.e., that there will be fewer livestock losses using IPM than there would be restricting the use of some or all of the control techniques. (SOR at 3.) Appellants complain that "[t]he DRs do not explain why a less environmentally damaging course of action was not or could not be chosen; nor do the DRs explain why minimizing livestock losses was given paramount consideration." Id. Appellants thus conclude that "there is

2/ The SOR of Friends refers to three arguments raised in the earlier appeal, IBLA 94-218, which it now "agree[s] to waive" and to do so "without prejudice." (SOR at 2, 10.) Having thus abandoned those arguments, they are beyond revival before the Board in this appeal, notwithstanding the assertion that the waiver is "without prejudice." Moreover, Friends' attempt to incorporate arguments raised in IBLA 94-218, (SOR at 2), is unavailing, as those facts and issues are not part of the record in the instant appeal. Craig C. Downer, 111 IBLA 332, 333, n.1 (1989).

no evidence in the three [DR/FONSI's] to indicate that environmental considerations were given any consideration at all in the decisions." Id.

Friends argues that even if livestock losses are a priority, "below some threshold, livestock losses will be so insignificant that other factors * * * will outweigh the perceived 'need' to minimize already minimal livestock losses." Id.

It is true that the DR/FONSI for each District does not include a threshold level of livestock losses, but that is because this issue was an element of Alternatives III and IV, which were analyzed in detail but not selected. (EA at 7-8, 99-100.) However, Sections III, IV, and V of the EA, and the numerous authorities, literature, and data cited therein and throughout the document clearly show that environmental and other considerations were measured and weighed, including the rationale for rejecting the other alternatives. Indeed, the EA fully explained why setting a threshold level of livestock was rejected. (EA at 8, 82.) The EA further explained why livestock losses are a primary consideration and the need for predator control on the public lands, and that rationale was adequately supported by the necessary data.

As stated in the EA, livestock production is a major industry in Montana. The BLM manages 8 million acres of public land in Montana, on which approximately 4,000 producers graze livestock representing 1.2 million animal unit months, and private lands are intermingled among tracts of public land. (EA at 16-17.) Data regarding livestock losses on public and private lands that were confirmed by APHIS covered the period 1987 through 1992, and ranged from 1,576 to 3,846 per year, with total confirmed losses of 15,006 livestock for that period. (DR/FONSI at 1; EA at 27.) The DOL confirmed losses of 440 to 1,003 during the period of 1990 to 1992, and a total loss of 2,142 animals. Id.; see EA at 66. The APHIS reported a confirmed loss of 19 percent of all adult sheep and 23 percent of all lambs due to all predators (the DR/FONSI failed to identify the year or years to which these percentages apply), compared to the losses reported by the Montana Agricultural Statistics Service (MASS) of 44,900 sheep and 2,100 cattle on all lands in 1991. Id.; see also EA at 16, 80.

As estimated by MASS, these combined depredations represent an annual loss to Montana of \$2.4 million. (EA at 1.) In addition, infrequent threats to human health and safety due to animals infected with plague are a concern. (DR/FONSI at 1; EA at 2.) Approximately 12 percent of the predators taken in FY 1992 were taken from BLM land, and assuming that the percentage can be fairly applied to all losses, 12 percent of the \$2.4 million amounts to \$288,000 in livestock losses on public lands. (EA at 16-17.) Appellants do not dispute these facts, and we find that they constitute a sufficient basis for the conclusion that lethal control is an appropriate method of predator control, particularly when authorized in the manner described in the EA. See also EA at 1, 8, 27-28, 43, 80, 82, 85.

Friends next contends that the EA does not fully or fairly analyze all reasonable alternatives, and that it improperly dismisses alternatives that would employ nonlethal husbandry standards. (SOR at 4-7.) Even a

superficial review of the EA shows that this argument is not supported by the record. Moreover, the selected alternative of IPM includes various techniques of animal husbandry, habitat modification, and animal behavior modification, all of which are to be encouraged before lethal control is requested. (EA at 12.)

The process for determining the precise mix and extent of all the techniques to be employed each year within the District is stated in the EA at 9-11, 12, and 83-84. The annual planning activity and review of relevant data and information gained from each year's experience will serve to address the particulars of the depredations and losses in each District, and thus we find that neither the EA nor the DR/FONSI for each District failed to explore reasonable alternatives or to employ nonlethal animal husbandry standards.

[2] To the extent Friends contends that the nonlethal options, Alternatives I and IV, should have been analyzed in detail, where an EIS to which the EA is tiered adequately considered the alternative, it need not be discussed again in the EA. Oregon National Resources Council, 115 IBLA 179, 186 (1990). Moreover, the Secretary of the Interior has ruled that the 1979 EIS prepared by FWS adequately discussed an alternative that emphasized nonlethal control techniques. In the Matter of the Appeals of Southern Utah Wilderness Alliance, Utah Wilderness Association, and Utah Chapter, Sierra Club at 13, SEC 92-UT 101 (Dec. 17, 1992).

Friends alleges that the EA relies upon only more favorable data from 1992, and that it thereby "improperly hides 'the significance' of impacts" by doing so. (SOR at 9.) We find no basis for that allegation in our reading of the record. The EA presented considerable data on coyote takes since 1986 that included both 1991-92, the year of the highest number of takes noted by Friends, and 1990-91, the year of the lowest number of takes, with respect to which Appellants are silent. See EA at 29-30. The EA also presented a range of percentages of impacts on the coyote and red fox populations. Id. at 29. Friends assumes the highest estimated percentage of takes, 26.8 percent, is a constant, and fails to acknowledge or address the 3 percent impact at the lowest end of the range and all the possibilities between the two. Accordingly, the claim that the EA selects and relies upon only "more favorable" data is dismissed.

We turn now to Friends' argument that the decision to use "extensive lethal control" is not justified, and cannot be justified based on requests from private livestock producers who are not permittees. (SOR at 11-12.) We are constrained to note that we take issue with Appellant's characterization of the lethal component of IPM as "extensive," and note that the EA in fact states the opposite. The EA specifically identifies the instances in which predator management would be prohibited or restricted under certain conditions, notes the stipulations that govern predator management activities in Wilderness Study Areas and Areas of Critical Environmental Concern, and defines the human health and safety buffer zones. (EA at 9-10.) The actual management methods and techniques are to be decided on an annual basis among representatives of BLM, APHIS, DOL, and the Montana DFWP. Id. at 11. Indeed, we observe that much of the language regarding

the factors that must be considered in selecting management methods was added by BLM as a result of the public comment on the original EA. Management strategies will be developed by integrated use of

several methods, either simultaneously or sequentially. * * *
In selecting control techniques for specific damage situations, a wide variety of factors [is] considered, such as: the depredating species responsible, status of the target or potential nontarget species, season of damage, local environmental, legal aspects, magnitude of the damage, geographical extent, duration and frequency of the damage, prevention of future damage (i.e. use of guard dogs v. lethal methods) and relative costs of control options. * * * Non-lethal livestock producer techniques are strongly encouraged.

Id. at 12.

Preventive control, also to be established during the Annual Work Plan meetings among the parties, is to be based on historical loss data and trending, and is subject to the same considerations as corrective predator management activities. Thus, we are unable to accept Friends' characterization of IPM, and we also reject the assertion that lethal control is unjustified.

Friends contends that "BLM may not tier to another agency's EIS. Instead, the BLM must first 'adopt' that EIS and issue its own distinct Record of Decision." (SOR at 14.) Friends ultimately concludes that the EA lacks a "legally sufficient programmatic NEPA document to which BLM's EA is tiered. This violates NEPA." Id. at 15. We note, however, that tiering is not merely authorized by the regulations implementing NEPA, it is encouraged. 40 C.F.R. § 1502.20. We have found no authority supporting Appellants' view of required procedure by which one organizational component of an agency tiers to the EIS of another component of the same agency, and none has been provided by Appellants. Moreover, as noted above, the Secretary of the Interior has expressly approved the Districts' tiering to the 1979 EIS. See Friends of the Bow, 139 IBLA 141, 145 (1997).

Lastly, Friends questions the adequacy of the site-specific analysis of the coyote and fox populations, which we will deal with below.

Appellant PP argues that a new EIS is required because "[a]ll assumptions in the EA are based on data extrapolated from studies far removed from sites where the program is carried out." (SOR at 2.) Like Friends, PP believes the range of alternatives considered was inadequate and that the EA's discussion of cumulative and indirect impacts is inadequate. Id. at 3. In a variation on Friends' challenge to the adequacy of site-specific data, PP more particularly asserts BLM has "no adequate base-line data on predator populations," and that the estimates are based on general information of poor quality. Id. at 4-5. Appellant PP accepts BLM's statement that the collection of site-specific data on all coyote populations is not feasible, id. at 4, but nonetheless argues that each District

should have conducted a survey, at least in the sheep allotments. There is no question that a census of the entire state and local coyote and red fox populations would be preferred. Absent a census, however, the question is whether the means employed to estimate these populations or the impact of predator management on the public lands in this case is so flawed that the information must be rejected.

Appellants are required to show by a preponderance of evidence that the methods employed are erroneous as a matter of fact or law. The showing necessary to carry the burden of proof is more than a recitation of all the questions that a census could answer definitively. Appellants have not offered the population figure or data they believe is more accurate, and they similarly have not identified a method short of a census that would produce a more reliable estimate. Appellant PP criticizes some of the data and studies BLM used because they were collected or conducted in jurisdictions other than Montana, but has not shown that such data are wholly inapplicable to, or invalid in, Montana.

Appellant PP further alleges that program monitoring is deficient in that the DR/FONSI requires only a count of animals taken each year. (SOR at 6.) Appellant PP refers to provisions of the BLM Manual that require broader monitoring activity to show that the DR/FONSI is inadequate. We find nothing in the record to suggest that BLM intends to or will ignore the Manual requirements for monitoring, and we will not assume otherwise.

In PP's view, the standards for authorizing emergency control are arbitrary and capricious because "emergency" is undefined and the determination of what constitutes an emergency rests with APHIS. *Id.* at 8.

This is not accurate. The APHIS or DOL may recommend emergency damage control on public lands, but the decision rests with the BLM District Manager, who may reject, approve, or modify the recommendation. (EA at 14-15.) In addition, the question of what constitutes an "emergency" was stated as Issue No. 37, and it was answered in detail. *Id.* at 90.

The record abundantly demonstrates that BLM, working with APHIS, DOL, and DFWP, seriously examined the problem of predator control in Montana, that it accurately identified the relevant areas of environmental concern, and that it utilized available data in doing so. The continuing issue for Appellants is their conviction that the priorities reflected in each DR/FONSI are wrong. Friends argues that over a 10-year period, IPM would "contribute" to the deaths of 100,000 wild animals, and that such a number cannot reasonably be deemed insignificant so as to justify the FONSI. (SOR at 8.) Appellant PP, though it has not offered its own figure for coyote deaths, agrees that "[k]illing thousands of animals can not reasonably be considered 'insignificant.'" (SOR at 2.)

We are uncertain how Friends arrived at the figure of 100,000 animals in a decade, since 5 percent of the population as estimated by the scientific model produces a range of 2,850 to 28,500 coyotes taken annually, or 15,000 coyotes per year if the density indices are utilized. Similarly, 2.5 percent of the red fox population of 379,000, as estimated by the scientific model, results in a figure of 9,475 animals taken per year.

Appellant Friends speculates that the annual take could reach 42 percent of the total population when all causes of mortality are considered, or exceed 42 percent if fur takes reach the 1987-88 level of 16,000 animals. For purposes of making this latter point at least, it seems Friends assumes a population of 240,500 coyotes statewide, although nowhere is the basis for selecting this number described or discussed.

Even without knowing Friends' methodology, however, it is clear that the significance of the annual take figure can be fairly assessed only in light of total population and local population references for these predators. Any such figures necessarily are affected by fluctuations and variations among other relevant factors bearing upon population growth each year, such as abundance of food, time of year, and habitat, none of which is disputed by Appellants. See EA at 17-18. The EA acknowledges that actual population data are not available, and provides the factual and scientific bases for estimating the population ranges on which the EA depends for its conclusions. Appellants do not contend actual data are available, and they have produced no better or more reliable evidence or scientific authority that would lead us to doubt the methods BLM utilized. They have not even stated alternative population figures or ranges they believe to be more appropriate, and they have not acknowledged the mitigation strategies to be utilized to lessen any adverse impacts. At best, Appellants have demonstrated a difference of opinion.

In addition, Appellants' arguments ignore the manner in which the impacts actually were analyzed. In its Answer, BLM defends its predator population analysis as follows:

To provide the most stringent analysis, the lowest statewide coyote population estimate was used (57,000 animals) to determine the highest possible percentage of takes for each [D]istrict. In 1992 in the Miles City [D]istrict, approximately 405 coyotes were taken on BLM land. The lowest estimated coyote population is about 1,700 animals for a maximum percentage take of about 24 percent. In the Lewistown District, approximately 171 coyotes were taken on BLM land. The lowest estimated coyote population for the Lewistown [D]istrict is about 1,400 animals, for a maximum percentage take of about 12 percent on BLM land. The Butte District had approximately 31 coyotes taken from BLM land. The lowest estimated coyote population for the Butte [D]istrict is about 900 animals, for a maximum percentage take of about 3 percent. * * * The cumulative coyote takes (takes from APHIS-ADC, DOL, trapping and sport hunting, etc.), still provides an insignificant statewide percentage take of 5 percent of the estimated coyote, and 2.4 percent of the cumulative red fox take statewide.

In 1992, 2,038 red foxes were taken by APHIS-ADC and DOL in Montana on private and BLM lands (about 0.5 percent of the population), and 6,935 red foxes were taken by sport hunters or trappers. The cumulative effect * * * would be about 2.4 percent of the red fox population * * *.

(Answer at 9-10.) Since no better theory or population figure has been advanced, we accept this approach as a reasonable one that ensures a more stringent analysis of impacts. We accordingly find that the cumulative and indirect impacts of ADC takes on coyote and red fox populations adequately supports each DR/FONSI.

Friends and PP argue that special status species are not sufficiently protected. Their issues regarding the impacts to endangered, threatened, and special status species similarly are not borne out by the record. As required by the Endangered Species Act, as amended, 16 U.S.C. §§ 1531 through 1544 (1994), the FWS formally consulted with APHIS and issued its Biological Opinion (Opinion) dated July 28, 1992, which addressed the major components of the ADC program, including operations, research, and technical assistance. The Opinion identified the species not likely to be adversely affected by any aspect of the ADC program, and those that would be affected.

With respect to the latter, the Opinion also identified in detail reasonable and prudent alternatives to the proposed ADC actions that were designed to decrease or avoid jeopardizing the continued existence of the species thus identified. See Opinion, Appendix 4 to the September 1993 EA.

Subject to such mitigation measures, the Opinion concluded that the predator control strategies of the EA are not likely to affect such species, and that in areas where such species are found, they will be protected by the mitigating measures specified in the Opinion. Appellants do not attack or even acknowledge the Opinion, its underlying analyses and data, or the validity and anticipated effects of the mitigation strategies.

We therefore hold that the EA adequately protects special status species.

We conclude that the points advanced by Appellants are nothing more than arguments that the balance should have been struck differently. Such arguments do not constitute the necessary showing by a preponderance of evidence that the DR/FONSI's are decisions that are based upon an irrational analysis of available information. The BLM properly allowed a Federally administered program for predator management on public lands, including the use of lethal means, after considering environmental impacts of the proposed action and alternatives thereto, and reasonably concluding that no significant impact would result therefrom. We hold that the District Managers properly determined that predator control on BLM-administered lands poses no significant impact on the total coyote and red fox populations, other wildlife, or the human environment in the State of Montana.

To the extent Appellants have raised arguments not specifically addressed herein, they have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the DR/FONSI's appealed from are affirmed.

T. Britt Price
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

140 IBLA 172